Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025

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Submission by Legal Aid Queensland

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Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make submissions on the *Domestic and Family Violence Protection and Other Legislation Amendment Bill 2025* ("the Bill").

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997,* LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day-to-day application of the law in courts and tribunals.

This submission calls upon the experience of LAQ's lawyers in Criminal Law Services, the largest criminal law practice in Queensland. LAQ believes that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

This submission also calls upon the experience of lawyers in LAQ's Family Law Services, incorporating the specialist Violence Prevention and Women's Advocacy (VPWA) Team. VPWA represents persons who have experienced domestic and family violence, including sexual assault, in family law, civil domestic and family violence and child protection matters.

Submission

Police Protection Directions

As noted in the Explanatory Notes, the *Domestic and Family Violence Prevention Act* (DFVPA) currently includes a framework for police to issue Police Protection Notifications (PPN).[1] A PPN can be taken as an application for a protection order and provide immediate protection to the aggrieved person until the matter can be determined through a court process. The Bill seeks to institute a new system of 'Police Protection Directions' (PPDs), under which police officers will be empowered to administratively issue 12-month protection directions without an application being filed, heard, and determined before a court.

LAQ has significant concerns about the PPD powers provided under the Bill. It is LAQ's view that the current PPN framework strikes the appropriate balance between protection to the aggrieved person and the respondent's right to procedural fairness. The addition of PPDs will not, in LAQ's view, meaningfully add to the protection of victims of domestic and family violence and poses numerous difficulties and challenges, which are enumerated below.

Procedural fairness

The sections of the Bill dealing with PPD powers sit in direct opposition to the right to a fair hearing enshrined in section 31(1) of the *Human Rights Act 2019 (Qld)*: "a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court after a fair and public hearing". A PPD issued, essentially, 'on the spot' and for a period of 12 months would allow no chance for either party to seek legal advice, no opportunity for evidence to be tested, and no prospect of either party exercising their right to a fair hearing.

It is of paramount importance for victims to have their voices heard and to be given the opportunity to have meaningful input into the intervention. It is difficult to imagine how the views and wishes of an aggrieved person might be reliably obtained in the circumstances envisaged by the PPD framework – that is, a heightened situation where there may well be serious and ongoing safety concerns. If the aggrieved person is distressed, they may be unable to fully convey their views or concerns to police before the implementation of the PPD. The aggrieved person may also be unable to adequately understand the provisions of the PPD, or to advocate for the inclusion of additional protections (such as an ouster order as provided for in section 100H(3)(b)).

Issues of procedural fairness will only be intensified if any of the parties have additional vulnerabilities (for example, if a party is First Nations, culturally and linguistically diverse [CALD], has physical and/or mental disabilities or has mental health issues). The needs and circumstances of the parties involved may well be unimaginably complex. There is no requirement in the relevant sections of the Bill for police to ensure parties have access to an interpreter as required, which is, in LAQ's view, a significant oversight that should be corrected before the Bill passes into law. Police may be confronted with a situation involving an aggrieved person or respondent who has impaired capacity because of drugs or alcohol, or who is in the grips of a mental health episode. How, in those circumstances, can police be satisfied that the relevant party has the capacity to understand the PPD and its consequences?

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[1] Division 2, *Domestic and Family Violence Protection Act 2012 (Qld)*

It is LAQ's view that the proposed PPD system fails to appreciate the potential benefits that the court process can bring to all parties involved in a domestic and family violence matter. Although it can take time, progressing the matter through court gives the parties time to reflect and consider their options. Interpreters and support services are available to assist both parties to the application. The court process provides an avenue for the aggrieved person, respondent or named person to link in with services that they may not otherwise have the opportunity or means to access, particularly in low socio-economic areas. Without this pathway to support, the victim of domestic and family violence may become further isolated.

There are also potential repercussions for the respondent. Aside from circumventing an opportunity to engage the respondent with relevant support services, avoiding a court process may not impress upon the respondent the seriousness of their actions. As such, it is LAQ's concern that the PPD process may not adequately hold the respondent accountable for their actions.

Ultimately, LAQ considers that the role of police ought to be kept separate from the role of the judiciary. Police should not be both investigators and adjudicators. Courts are equipped with appropriate processes that enable parties to seek legal representation, reflect and take an informed position on the issues in dispute, and present and challenge evidence. The PPD process, in LAQ's submission, risks compromising the principles of procedural fairness that are the backbone of the legal system. LAQ considers the existing PPN framework, which provides the police with mechanisms for immediate protection but balances these against the need for due process afforded by the courts, to be sufficient.

Identifying the person most in need of protection

One of the most significant concerns held by LAQ about the proposed PPD framework is the potential for the person most in need of protection to be misidentified by police. Anecdotally, LAQ's duty lawyers and social work practitioners already see a large proportion of respondents to PPN applications who have been misidentified as the aggressor, particularly in circumstances where the aggrieved person in the PPN has been the perpetrator of coercive control throughout the relationship.

Without understanding the history and context of the behaviour and the relationship between parties, victim-survivors using resistive violence can be labelled as abusive and violent, opening them up to system disadvantage, biases and further abuse by the person using violence. Under the existing PPN system, these matters currently present at court shortly after the PPN is issued. The person most in need of protection can engage with duty lawyers and social support services, allowing practitioners to advocate for more appropriate outcomes such as the dismissal of the application or an adjournment to allow for a cross-application to be filed. The courts can review police information, consider additional evidence, hear from both parties, and apply their specialised knowledge to the matter.

Without this process, the person most in need of protection may remain at risk of further violence, criminal prosecution and of being failed by the system intended to protect them. This has the potential to further impact help-seeking behaviours in the future.

LAQ holds concerns that police are not yet adequately educated in the nuances of coercive and controlling domestic and family violence to enable them to make the necessary distinction between victim and perpetrator, particularly in a fast-moving and unpredictable scenario such as that anticipated by the PPD framework. If front-line police discretion is to

be manifestly increased as proposed by the Bill, LAQ considers it essential for police officers to undergo mandatory, comprehensive training in the dynamics of domestic and family violence (with a particular emphasis on coercive control), trauma-informed responses, and cultural safety when interacting with First Nations and CALD persons.

Impact on First Nations people

It is well established that First Nations people are disproportionately affected by domestic and family violence, and that culturally appropriate responses to domestic and family violence are essential. Consideration of both factors is noticeably lacking in the Bill.

In LAQ's submission, self-determination is a critical factor for First Nations people. There has been no indication of specific consultation and communication with First Nations communities and groups about this Bill, and no consideration of how the history of police intervention into First Nations communities might affect the way that First Nations people experience the increased police powers and discretion provided by the PPD system. Instead, the Bill offers a 'one-size-fits-all' response, when what is needed is a more specialised approach that will not cause further harm and lead to further disempowerment of First Nations people at risk of or experiencing violence.

Service and explanation

Section 100B(3) requires police to make a reasonable attempt to locate the respondent if the respondent is not at the same location and talk to the respondent, including by telephone, to afford them natural justice in issuing the PPD. LAQ considers there to be a considerable lack of clarity in this provision. It is unclear what a "reasonable attempt" would constitute, or whether a PPD made in the absence of, and without the knowledge of, the respondent would have issues with enforceability. There is a significant risk of criminalisation for persons who have not had the existence and consequences of the PPD explained to them.

Similarly, section 100Q(2) requires the police to explain the PPD, the grounds on which the PPD has been made, and the reasons the police officer imposed specific conditions, and to take reasonable steps to ensure the person understands the nature and consequences of the direction. While LAQ acknowledges the efforts made to ensure that the parties understand the nature and consequences of the PPD, LAQ holds significant concerns surrounding the realistic probability of an aggrieved person or respondent truly understanding the nature and consequences of the conditions contained within a PPD. The circumstances in which it is envisaged that a PPD could be utilised inherently involve vulnerable and disadvantaged persons, who may suffer from impaired capacity, come from CALD backgrounds, or have an inherent distrust or fear of the police, at a time in which there is likely to be significant emotional elevation. This scheme relies on a police officer to effectively explain those conditions to a person who has no recourse, via a procedurally fair mechanism, to receive the support and advice they are entitled to that contribute to their understanding of the obligations.

LAQ also notes that, while the Bill provides for the respondent to be issued a notice stating the grounds for issuing the PPD, it indicates that this information must only be provided "as soon as reasonably practicable". In LAQ's view, it is contrary to the principles of procedural fairness for the grounds to be issued after the PPD is made. There is also the possibility that providing a copy of the grounds to the respondent will not take priority once the PPD is issued and takes effect. LAQ is strongly of the view that there should be a time limit imposed on providing the grounds on which the PPD is issued to the respondent.

Exclusions

Section 100C outlines circumstances in which a PPD cannot be issued against a respondent. These include where a domestic violence order or recognised interstate order relating to the respondent and the aggrieved person is in force or has previously been in force (section 100C(1)(c)), where a police protection direction against the respondent is in force or has previously been in force (section 100C(1)(d), the respondent has been convicted of a domestic violence offence within the previous two years (section 100C(1)(e)), or where a proceeding or application against the respondent has been made but not finalised (section 100C(1)(f)-(g).

It is LAQ's view that, to avoid any ambiguity, these sections should specify that the PPD, conviction or current proceeding or application against the respondent does not have to involve the aggrieved person (i.e. the domestic violence history could be between the respondent and a separate aggrieved person).

Section 100C(1)(i) also provides that a PPD should not be issued if there are indications that both persons in the relationship are in need of protection, and the person who is most in need of protection in the relationship cannot be identified.

LAQ submits that it would be very difficult for police, even those with significant experience and training, to assess this complex issue adequately in a time-pressured and heightened situation. An increased level of training and education for police officers in domestic and family violence would assist with this but would not ameliorate the risk of misidentifying the person most in need of protection. This potential exclusion relies on the discretion of the police officer, some of whom will be more risk-averse than others. There is likely to be significant inconsistency in the application of this section, adding to the concerns about procedural fairness.

Section 100D deals with a PPD that includes a child of the respondent or named person and includes a condition that would prevent or limit contact between the respondent and the child. Under section 100D(2), a PPD must not be issued if police reasonably believe that a family law order, child protection order or care agreement is in place, or if a proceeding relating to the child under the *Child Protection Act 1999* or the *Family Law Act 1975* has been started but not finally dealt with.

In LAQ's view, these sections do not adequately deal with the enormous complexity inherent in the interplay between domestic and family violence and family law matters. In LAQ's experience, parties are not always forthcoming about existing orders or court proceedings or may not even be aware of court proceedings if they have not yet been served. The potential for a PPD to be made that contradicts an existing family law or child protection order is, in LAQ's view, very high. LAQ acknowledges that section 100D(4) deals with situations where inconsistent orders are made, by providing for the PPD to be of no effect to the extent of the inconsistency, while at the same time not being invalidated or otherwise affected. However, it is LAQ's view that this section is manifestly inadequate to manage the potential complications that could arise in the event of inconsistent PPDs and parenting orders. It also places a huge burden on the parties – who are likely to be unrepresented – to understand the legal and practical ramifications of the two duelling orders.

If the matter were to come before a court in a timely manner, as with the PPN framework, the judicial officer would be able to obtain information about other orders or proceedings and

use this knowledge to shape a functional protection order. The *DFVPA* can protect the aggrieved while still allowing for family law processes. For example, the aggrieved person can seek a no-contact order but have exceptions in place for parenting arrangements. LAQ is of the view that the existing system provides the necessary oversight for managing complex domestic and family violence matters that also involve family law issues.

Review processes

The Bill sets out two potential pathways for review: a police review process and an application for the PPD to be reviewed by the court. It is LAQ's view that the two separate review processes are likely to add an additional layer of confusion and difficulty for unrepresented parties.

The framework to a police review process of a PPD is outlined in subdivision 4. At the outset, it is of concern that there is no written notice or outline of the review process set out on the PPD notice[2]. It appears that an understanding of the right to review relies solely on the verbal explanation given by police at the time of the PPD being issued. It is highly unlikely, in LAQ's view, that persons in a state of heightened emotion, distress, or fear for their safety would be able to comprehend or recall this explanation. LAQ considers it to be of paramount importance, as a matter of basic procedural fairness, for the PPD form requirements to be amended so that the review process is outlined clearly in writing.

LAQ notes that, although section 100U(3) allows for a review to be sought 28 days after the date the grounds of the notice are served, there is no time limit for the police to serve the grounds of the notice. As outlined above, the only guiding provisions are that the grounds must be served "as soon as reasonably practicable". This could potentially leave the respondent unable to lodge a review for an indeterminate period.

Similarly, it would be extremely difficult for an application to be made for a court review of the PPD without provision of the grounds of the notice. If the grounds are not provided in a timely manner, there is the potential for frivolous or ill-informed applications to be made to the court and occupy already limited court time and resources.

LAQ notes that section 100W(1) creates an obligation to inform the aggrieved of the review and invite the respondent and aggrieved to make submissions about the review within seven days. In LAQ's experience, seven days is extremely unlikely to be enough time for a party to obtain legal advice and comply with the deadline. The parties may be people without access to a computer or the internet, or even a phone. They may be dealing with additional barriers to communicating with the police or be in a situation where their safety is at risk. In those circumstances, there is little chance that they will be able to make submissions within seven days. In LAQ's view, this does not reflect a victim-centred or trauma-informed approach.

Conversely, LAQ notes that the reviewing officer is allowed 28 days to make a decision about the review of the PPD under section 100Y(1). Given the imbalance between a (likely unrepresented) party to a PPD and a reviewing officer with access to all the practical, logistical, and legal support afforded to the Queensland Police Service, there appears to be an evident unfairness in the time each party is given to respond to the review process.

[2] Section 100N, *Domestic and Family Violence and Other Legislation Amendment Bill 2025*

LAQ also notes that there is no standing under section 100Z for a named person to apply for a court review of a PPD. This oversight is, in LAQ's view, procedurally unfair to the named person and should be remedied.

Electronic Monitoring Pilot

It is LAQ's concern that the mechanisms provided for in this section of the Bill do not sufficiently address the safety of the person experiencing violence. The restriction to the respondent's right to move freely is not, in LAQ's view, adequately balanced by a commensurate increase in the victim's safety.

It would be helpful to have more information regarding the "safety device" that will be given to the aggrieved person. The functions and features of the device, and how they will protect the aggrieved person, are unclear from the Bill. It is also unclear whether any "alerts" will be sent directly to the aggrieved person or to Queensland Police Service.

LAQ queries whether it would be more efficient for electronic monitoring to remain part of bail conditions, rather than risking contradictory conditions that increase confusion and do not assist with the safety of the aggrieved person. LAQ notes also that the *DFVPA* includes provision for the magistrate to make "any other conditions the court considers necessary or reliable" and suggests that this may present a more logical pathway to incorporate electronic monitoring in appropriate circumstances.

The Video Recorded Evidence-in-Chief (VREC) framework

LAQ acknowledges the benefit of VREC statements with respect to allowing for the provision of contemporaneous evidence and notes with the aim of avoiding re-traumatising victims. However, in LAQ's experience, there are some disadvantages to the VREC framework for both the complainant and defendant.

In the case of the complainant, the VREC framework does not reflect trauma-informed practice in several ways. It does not provide an opportunity to have a support person and interpreter present and does not give the complainant time to review their statement and make amendments or corrections. In LAQ's experience, the impact of trauma on memory means that the complainant often benefits from time and space to review their statement and provide further detail or clarity.

In the case of the defendant, LAQ criminal lawyers practising in the VREC pilot regions of Ipswich and Southport note that, in their experience, the use of VREC statements increases the complexity of giving advice to defendants. As the VREC statement is not disclosed to unrepresented defendants, the lawyer is required to liaise with the Police Prosecution Corps to enable the statement to be disclosed before any advice can be provided. Following receipt of the VREC statement by the lawyer, a longer advice session must be scheduled with the defendant to watch and review the statement and provide subsequent advice. The level of resourcing required by LAQ's duty lawyers and advice clinics to properly advise the defendant is significantly higher in matters involving a VREC statement. This also has the impact of delays in proceedings and an increase in remand time for those defendants refused bail. In the experience of LAQ's practitioners, those facing domestic violence charges, including charges for contravening orders, have been increasingly refused bail by police or when first brought before the court.

LAQ opposes the removal of the requirement for a trained police officer to take a VREC statement. For the complainant, it increases the likelihood that they will, in a time of great vulnerability and possible fear for their safety, be dealing with a police officer who does not have up-to-date training in domestic and family violence and trauma informed practice. The potential for re-traumatising the complainant is high. For the defendant, it is the experience of LAQ criminal lawyers in the pilot regions that the content and quality of the statements deteriorate in the absence of appropriate training. The conduct of the interview may result in challenges to its admissibility under the rules of evidence, negating the purpose of the VREC statement and increasing the likelihood of the complainant having to give that evidence at trial. To prevent inadmissible parts of a statement forming part of the evidence in a trial, there will be a significant imposition on prosecutors, who are already under heavy work burdens, to review and excise those sections in preparation for trial. Where that is unable to occur, defence lawyers and the courts will be required to determine what edits are required. This represents a significant resourcing issue for those practicing in the Magistrates Courts, and for the courts themselves.

It is LAQ's strong view that a comprehensive review of the VREC pilot ought to be undertaken before the pilot is extended state-wide. LAQ notes that in 2024 the pilot was extended to "enable further consideration of the use and effectiveness of the VREC".[3] There is no data or information that indicates whether the pilot was successful in achieving its stated purposes. Expanding the pilot in the absence of an examination of its impacts risks significant impact on a defendant's rights to be tried without unreasonable delay and to be informed promptly and in detail of the nature and reason for the charge.[4] LAQ also requires more information about how a state-wide expansion of the VREC framework would be resourced, in circumstances where LAQ's workload would be exponentially increased.

Approved Provider List

LAQ submits that these provisions would be strengthened by including a list of criteria for individual providers to be added to the provider list. LAQ notes that there is no provision for a complaints process or requirements for individual providers to attend training, both of which could lead to the provision of services that are below expectations.

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[3] Explanatory Notes, Evidence (Domestic Violence Proceedings) Amendment Regulation 2024, 1.
[4] *Human Rights Act 2019* (Qld) s 32(2)(a) & (c).